

**Docket No. 90412**

Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?

- c. Under Attestation #1 on the Application, the Applicant attests that:

I hereby certify that, *under penalty of perjury*, all of the information submitted in this application and attachments is true and complete. I am aware that *submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license* and may subject me to civil or criminal penalties [emphasis added].

- d. For each conviction, the Department requires the Applicant to provide copies of charging documents, sentencing documents, and a written statement regarding the circumstances of the incident.

- e. Applicant provided the Department with sentencing documents for the following conviction:

June 3, 2016, Morgan County Circuit Court (MO), Case No. 411653, Pursue/Take/Kill/Possess or Dispose of Wildlife (Misdemeanor). (Hereinafter, "Conviction").

- f. The court documents for the Conviction indicate that on May 7, 2016, Applicant was charged with misdemeanor Take/Kill/Possess or Dispose of Wildlife; the Applicant pled guilty to the charge on June 3, 2016. Applicant was required to pay a fine of \$118.00.

- g. Applicant answered "Yes" to Question 6 of the Application which asks:

Have you or any business in which you are or were an owner, partner, officer or director, or member or manager of a limited liability company, ever had an insurance agency contract or any other business relationship with an insurance company terminated for any alleged misconduct?

- h. For each incident, the Department requires an applicant to provide a written statement summarizing the details of each incident and explain why the applicant feels this incident should not prevent them from receiving an insurance license, and copies of all relevant documents.

- i. Applicant provided the Department with a written statement titled, "Why I Lost My Contract with Aflac" that contained the following explanation:

I lost my contract with Aflac as a 1099 producer under the pretense that I was educating Nashville Fire Department employees in Tennessee prior to my licensure in Tennessee. I was under strict instruction from my direct verticals including my district, regional and state directors .... *I was completely unaware of the licensing requirements as I was told by my [agency] that all licensing was handled by [an agency employee].*.... I was asked to work, and I did my job, only to find out it was a strategic pawn move to control me in the future. [Emphasis added.]

I worked closely with ["J.H."]<sup>1</sup> and therefore trusted him in my work in Tennessee. When things went south between J.H., [agency] executives, and I .... he turned me in to Aflac himself and wrote a letter stating it was all my fault and motive for being in TN, when in reality I would've never driven 7 hours from home to write business in a state that I'd never been in before in the first place. As a result, [Aflac] revoked my license to write new business ....

- j. The Department's Chief of Producer Licensing (Department's Witness") testified the Application was denied pursuant to K.S.A. 40-4909(a)(1), (6), and (8), and K.S.A. 40-4909(b) based on the Conviction, failure to disclose the Conviction to the Department, and facts underlying the Applicant's termination for cause.

- k. The Department's Witness testified the Department's primary role in licensing insurance producers is to determine that applicants are trustworthy and knowledgeable. The Department carefully considers the truthfulness of applicants, criminal convictions, and whether criminal convictions were disclosed. The Department also takes seriously administrative actions, violations of insurance regulations, and terminations for cause

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<sup>1</sup> This individual was described in documents and testimony at various times as an agent, a district/regional sales director for Aflac, a regional sales coordinator, one of Applicant's "bosses," and a manager at the agency with which Applicant was employed. For purposes of this Order he is referred to as "J.H."

involving an applicant. Terminations for cause involving illegal conduct or violations of insurance laws are of particular concern and are closely scrutinized.

1. The Department's witness testified the Department was concerned with the Applicant's lack of candor in failing to disclose the Conviction. Furthermore, in the Applicant's statement regarding his termination for cause the Applicant did not take responsibility for his actions, nor admitted to any violations of insurance laws or unethical activity. She testified the Department considers the totality of the circumstances when reviewing an application and, after considering the issues discussed above, the Department did not believe the insurable interests of the public would be served by granting the Applicant a license.

5. The Department introduced into evidence a "Report of Investigation" ("Report") dated June 16, 2020, and the transcript of an audio recording of an interview with the Applicant conducted in connection with the associated investigation from Aflac. Highly summarized, the Report and interview transcript contain the following relevant information regarding Applicant's termination for cause:

a. An Aflac representative, "T.M." was being investigated in 2020 for allegedly forging an insured's signature on an insurance form during an enrollment event in 2018 for firefighters in Nashville, Tennessee. The investigation was initiated based on a complaint from an insured that was present at the enrollment event.

b. T.M. told an Aflac Special Investigative Unit ("SIU") Investigator ("Investigator") he was not present at the Tennessee enrollment event and the signature on the form was not his.

c. During an interview of the Applicant in connection with the investigation of T.M., he initially indicated he was in Tennessee only to observe the enrollment event as part of his training and to assist other agents in completing forms. Eventually he admitted the following:

[J.H.] told me. He said, I know you're not licensed in Tennessee. But you can go down there and be [T.M.] *I had some legal issues going on back then. As far as you know, being in trouble with the law.<sup>2</sup> So I wasn't able to get a Tennessee license.* And I was basically not given a choice [to go to Tennessee]. They said you're going to go to Tennessee, you're going to just sit there pretend to be [T.M.] and help fill out things that need to be filled out. [Emphasis added.]

d. The Investigator said, "You would know that that was wrong. So did you report it to anyone?" The Applicant indicated he could not report it to J.H.'s boss, B.H., because J.H. and B.H. were neighbors and best friends, and he believed that whatever J.H. told him to do, B.H. would confirm for him to do it.

e. Following the investigation, the Applicant was notified by Aflac on June 22, 2020, that his appointment with the company was being terminated for cause, based on confirmation of the allegation of "using non-licensed enrollers; agent writing business without being licensed."

6. In his Prehearing Questionnaire dated November 23, 2021, submitted to the Presiding Officer, the Applicant identified the following as a "Question of Fact" to be determined at the hearing:

Was I in Tennessee as an unlicensed producer? Yes. I was instructed to do so, and was told it was not an option [not] to participate. Plus I needed the money as a young and broke insurance agent. Licensing was handled by reception in that office (an agency with over \$7M in revenue). *I never even*

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<sup>2</sup> Evidence was presented at hearing about a legal matter the Applicant was embroiled in from mid-2017 through mid-2019. The nature of the legal matter does not need to be discussed herein. However, the existence of the legal matter is relevant with regard to the Applicant's admission to the Investigator that he knew he could not get a Tennessee insurance producer license while that matter was pending.

*knew I did anything wrong until my own bosses who sent me there turned me in* to corporate in order to have my contract and 4 years of renewals revoked. It was a chess move in this extremely lethargic and boring story that's been my career. [Emphasis added.]

7. Applicant's testimony and documents presented as evidence at the hearing provide the following information which has bearing on his license application:

a. The Conviction was for fishing at a lake without the required state fishing license. He answered no to background question 1A on the application because he thought of the Conviction more akin to receiving a ticket and did not realize it constituted a misdemeanor conviction.

b. Applicant testified that he was working for an agency located in Missouri at the time the conduct underlying the termination from Aflac for cause occurred.

c. Applicant testified J.H., a director or manager with the agency, sent him to Tennessee to participate in an insurance enrollment event for firefighters in early 2018. He was told he could earn \$15,000 for participating in the enrollment event. Applicant testified he relied on the agency to obtain a Tennessee nonresident producer license for him. He stated:

One of the things [the agency] did for all of us agents was handle licensing and applications whether you need to renew appointments with companies or whether you are going to work in a different state. And it was always quick, it was always pick up the phone, call, you need to be here, go .... So I went down to Tennessee to help and I was told you know, we'll get your Tennessee license. Don't worry about it. You just need to go, we need bodies down there because we have to get this done by the end of May for enrollment.... I would have never been in Tennessee had I not [been] asked to have gone down there. I should have taken the liberty myself to see my own license in Tennessee, before I ever set foot in Tennessee. So that is my fault. But [J.H.] was someone I trusted and I thought would never put me in a position to be where I am right now."

d. Applicant testified that J.H. was like a father to him, that he lived at times with J.H., that he was close friends with J.H.'s children, and that he felt he was part of J.H.'s family.

e. Applicant testified there were subsequent disagreements between himself and J.H. which led to J.H. recommending in 2020 that Applicant be terminated from Aflac.

f. Applicant testified he understood he could not sell insurance in a state where he was not licensed. Conversely, he testified he did not question traveling to Tennessee to sell insurance even though he knew he was not licensed in Tennessee. He indicated licensing for all agency representatives was handled by one individual at the agency. Applicant further testified he believed that individual applied on Applicant's behalf for an insurance producer's license in Tennessee and the application was subsequently denied.

g. There was no evidence introduced during the formal hearing, other than Applicant's testimony, to support the assertion that an application had been submitted to the Tennessee Insurance Department and denied. Applicant testified he had not received a letter from Tennessee advising his application had been denied; all such communications would have been sent to the agency's licensing person.

h. Applicant acknowledged that he understood that he could not sell insurance in a state in which he was not licensed, and that it was his responsibility to make sure he was properly licensed before writing insurance business. He further indicated that in hindsight he should have confirmed whether he was licensed in Tennessee before participating in the enrollment event.

i. Applicant testified he was told directly by J.H. to travel to Tennessee and sign individuals up for insurance policies under T.M.'s name and to place T.M.'s name on the

applications for insurance. Applicant further testified he knew he was told to put T.M.'s name on applications because Applicant was not licensed in Tennessee.

j. Applicant first testified that he "may" have told some prospective insureds that he was T.M. while he was in Tennessee. Applicant later testified he used T.M.'s name because T.M. was licensed in Tennessee and Applicant was not.

k. When asked if he would have been fired from his job if he didn't go to Tennessee, the Applicant said:

I don't know that they would have fired me and in full transparency, but it was a combination of the fact that you know, there was a big financial opportunity there .... And then also the fact that [J.H.] was saying, "you need to do this for me. I need your help." It was the people pleaser in me trying to make everybody happy.

l. During Applicant's testimony, the Presiding Officer stated:

I'm getting conflicting messages.... Because you're acknowledging you were [in Tennessee] as an unlicensed producer, you've said you thought that they were handling the licensing for you. And yet, when you were there, you impersonated somebody else who was a licensed agent. And you understood that's why you were doing that. Because [T.M.] was licensed and you weren't. So you did know that what you were doing was wrong?

The Applicant answered, "Yes."

m. The Applicant continued to work at the agency until 2020 when his appointment with Aflac was terminated.

n. Applicant is currently employed by an agency in Overland Park, Kansas.

8. Three letters were submitted on the Applicant's behalf, all of which attested to his professionalism and other positive personal traits, and that he would be an asset to the insurance industry. Some statements in the letters are relevant to a central issue presented in this matter. One letter is from a friend who had worked for Aflac for many years. He stated:

Reece was part of an enrollment team that was told by his leadership to go out of state to enrollment with a team of people from brokerage agency he was working for and Reece was just doing what he was told as a new agent.... I believe he was honest with the investigators when Aflac called him and he told them exactly what had happened. This resulted in Aflac terminating his contract [due] to solicitation of Aflac applications without the out of state license.... I feel this was a lack of knowledge being a newer agent at the time and also felt since his leadership told him to just go and enroll he was in a very tough position to question if he was doing anything wrong.... I believe this was a mistake Reece has learned a great lesson from and it will never happen again.

Another letter was from the Applicant's practice leader at the agency with which he is currently employed. This person also had worked for Aflac for many years and had risen to the level of a Regional Sales Coordinator ("RSC"). He stated, in part:

It's an RSC's duty to look after their team and guide each producer in a legal and productive manner. I would never knowingly send a new producer to a state in which he or she was unlicensed to conduct business.... [I]t's common knowledge that licenses must be obtained from each state. Usually this consists of paying a fee and receiving the license. I do believe that as a new producer it's understandable that Reece was not only misled but also misinformed by his leaders, but also unaware of the prerequisites that a health and life producer must meet to conduct business in a different state.... I hope the Department of Insurance takes into consideration that the actions in question were incentivized by the managers that led Reece. It's not just my opinion that he was doing as instructed, [J.H.] told me directly that he had indeed told Reece to go do this enrollment in Tennessee.

9. At the hearing, Counsel for the Department asked the Presiding Officer to affirm the Department's denial based on K.S.A. 40-4909. Counsel for the Department further asked the Presiding Officer to consider the misdemeanor conviction, Applicant's failure to disclose the conviction, and the conduct underlying the termination for cause. Counsel for the Department asked the Presiding Officer to uphold the Department's decision based on the fraudulent, dishonest, and untrustworthy activity involved in the termination for cause which outweighs any mitigating circumstances that may be present.

10. Applicant testified that he is very passionate about insurance and saving people money. Applicant testified he has grown up a lot since being terminated by Aflac. He also indicated he

was young at the time,<sup>3</sup> that he put too much faith in people, and had bills to pay. He acknowledged he had made a mistake. He also indicated that during that time he was an alcoholic. His testimony indicated he subsequently recognized he had an alcohol problem, made a decision to change the direction of his life, and now no longer consumes alcohol. He stated he now “has a clearer vision on decisions regarding licensing and compliance.”

### **Applicable Law**

11. Pursuant to K.S.A. 77-526(a), the Assistant Commissioner of Insurance acting on behalf of the Commissioner of Insurance as the agency head, as provided in K.S.A. 77-547, is empowered to render a Final Order. K.S.A. 40-4906(a) states “Unless denied licensure pursuant to K.S.A. 2021 Supp. 40-4909, and amendments thereto, a nonresident person shall receive a nonresident agent license....” Further, K.S.A. 40-241 states that “[i]f the commissioner of insurance finds that the individual applicant is trustworthy, competent and has [passed the appropriate licensing examination],” the commissioner shall issue a license to the applicant.”

12. Pursuant to K.S.A. 40-4909(a), the Commissioner may deny, suspend, revoke or refuse renewal of a license upon finding that the applicant or license holder has:

- a. Provided incorrect, misleading, incomplete, or untrue information in the license application. K.S.A. 40-4909(a)(1).
- b. Been convicted of a misdemeanor or felony. K.S.A. 40-4909(a)(6).
- c. Used any fraudulent, coercive, or dishonest practice, or demonstrated any incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere. K.S.A. 40-4909(a)(8).

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<sup>3</sup> At the time of the enrollment event in Tennessee in 2018, the Applicant was 23 years old. He is now 27.

13. Pursuant to K.S.A. 40-4909(b), the Commissioner may deny, suspend, revoke or refuse renewal of a license upon finding the interests of the insurer or the insurable interests of the public are not properly served under such license.

14. K.S.A. 40-4909(c)(1) sets forth factors the Commissioner shall consider when considering whether to deny, suspend, revoke, or refuse to renew the application of an individual who has been convicted of a misdemeanor or felony.

15. The Commissioner has delegated to the Presiding Officer the duty and obligation to weigh evidence provided at a hearing and issue a final order based upon such evidence.

#### **Policy Reasons**

16. Before issuing a nonresident insurance producer's license, the applicant must not have been denied pursuant to K.S.A. 40-4909. Pursuant to K.S.A. 40-4909(a), the Commissioner may determine whether the applicant has committed any act that would be grounds for denial, suspension, revocation, or non-renewal of an insurance producer's license. The Commissioner has the responsibility to determine those licensed to sell insurance in Kansas are trustworthy and competent. K.S.A. 40-241. Further, the Commissioner is charged with licensing, or continuing to license, persons, or entities to sell, solicit, or negotiate insurance in the state of Kansas only if the insurable interests of the public are properly served under such license. K.S.A. 40-4909(b).

#### **Discussion**

17. The Presiding Officer notes this matter involves three separate and distinct issues. The first issue is Applicant's Conviction, the second is his failure to disclose the Conviction, and the third is his termination for cause from Aflac.

18. With regard to the first issue, the Conviction was for fishing without a license, which is not egregious. In addition, it occurred over five years ago and appears to have been an isolated incident. As such, the Presiding Officer will disregard it in weighing the evidence in this matter.

19. With regard to the second issue, the Commissioner takes seriously an applicant's failure to disclose convictions on a licensing application, regardless of the severity of the conviction. Falsely certifying, under penalty of perjury, that information on a licensing application is truthful and complete, is very serious. It indicates the applicant either did not exercise care in completing the application or did not understand the seriousness of falsely certifying to the truth of information under penalty of perjury. Such conduct constitutes providing incorrect, misleading, incomplete, or untrue information in the license application. The Applicant's explanation of not considering the fishing ticket to constitute a misdemeanor conviction does not justify his failure to take care in completing his application accurately, which could have included making appropriate inquiries to ensure whether the fishing conviction should be disclosed. This is especially true when attesting to the truth and accuracy of the information under penalty of perjury.

20. The third issue, and most damaging to Applicant's cause, involves the circumstances underlying his termination for cause from Aflac. Succinctly stated, he engaged in the sale and solicitation of insurance in a state in which he was not licensed while knowing he did not hold a license to sell insurance in that state, and furthermore tried to conceal his unlawful activities by impersonating a licensed agent. This conduct constitutes the use of fraudulent or dishonest practices and demonstrates untrustworthiness in the conduct of business, for which the Commissioner is expressly authorized, under K.S.A. 40-4909(a)(8), to deny a license for selling insurance in this state.

21. The Applicant did not deny the conduct cited in the paragraph above. However, he gave multiple excuses for this conduct, including that he thought his agency would apply for a license for him, that he was directed by his superiors to go to Tennessee although he didn't have a license in that state, that he needed the money, that he was told to impersonate T.M., that he didn't feel he had an option not to participate in the enrollment event in Tennessee, that he was young, and relatively new to the insurance business. Mostly, he placed the blame for his actions on J.H., whom he trusted at the time.

22. Selling insurance in a state in which a person is not licensed is very serious. This conduct is even more egregious when coupled with impersonating another agent in a calculated effort to disguise such unlawful insurance activities. The Applicant presented testimony and other evidence that establishes mitigating factors which should be given consideration in this matter. These include that the conduct occurred in 2018 (almost five years ago), that the Applicant was relatively new to the insurance business, and that he was young. He trusted a senior manager that directed him to engage in unethical and unlicensed activities. One person who wrote on his behalf indicated the Applicant, being a newer agent at the time, was put in "a very tough position to question if he was doing anything wrong" when he was directed by his leadership to go to Tennessee. Other letters indicated the Applicant had learned from his mistakes, and that he would be an excellent insurance producer due to his professionalism, knowledge, integrity, and honesty.

23. These factors could be persuasive if not outweighed by the Applicant's conflicting and inconsistent statements throughout the application and hearing processes, and Applicant's failure to take accountability for his actions. The conflicting and inconsistent statements were numerous; all of them need not be detailed herein. However, as an example, he admitted in 2020 to the Aflac SIU investigator that he was told by J.H. to engage in the 2018 enrollment event in Tennessee

although he and J.H. knew he wasn't licensed in that state, and was further told to represent to people that he was T.M. **He further admitted to the Investigator he could not get a Tennessee license because of legal trouble he was having at that time.** However, he subsequently provided the following contradicting statements to the Department in connection with his Application and at the hearing:

- a. In his statement regarding his termination by Aflac he said he was completely unaware of the licensing requirements [in Tennessee]. He clarified at the hearing that he was aware of the requirements but just believed they were being taken care of by his agency.
- b. He believed an application was submitted but was denied due to his legal problems.
- c. In hindsight he should have checked to see whether he was licensed in Tennessee.
- d. It was not an option for him not to participate in the enrollment event.
- e. He had to go to Tennessee because J.H. told him to.
- f. He did not think he would have been fired if he declined to go to Tennessee as directed.
- g. He wanted to go because of the financial opportunity, and he wanted to please J.H.
- h. At the time he was in Tennessee he knew he was not licensed but nevertheless engaged in the solicitation and sale of insurance.
- i. He "may" have told some people he was T.M.
- j. He used T.M.'s name because T.M. was licensed in Tennessee and Applicant was not.
- k. He admitted at the hearing he knew what he did was wrong.
- l. He said in his prehearing questionnaire that he didn't know that what he did was wrong.
- m. When questioned about that at the hearing, he said, "If I said it, then that was probably how I felt at the time." The prehearing questionnaire was submitted three months before the

date of the hearing. It can be inferred that as recently as three months before the hearing the Applicant did not believe he had done anything wrong.

24. Due to these many inconsistencies and the recency of conflicting statements, the Presiding Officer did not find the Applicant to be credible. It required a significant amount of questioning by the Department's Counsel and Presiding Officer to flush out these inconsistencies and get a full and complete account of Applicant's conduct involved in the termination for cause.

25. Although eventually admitting that he recognized what he had done was wrong, the Applicant continued to blame others for the conduct that led to his termination for cause. In doing so, he did not take responsibility for his actions. While J.H. was a senior manager over the Applicant, and Applicant had a relationship of trust with him, the Applicant was still responsible, as a licensed insurance producer, to know and understand licensing requirements.

26. He also attempted to claim that he wasn't responsible for going to Tennessee without first obtaining a license to sell in that state, "because the agency did it for him." It is a fundamental principle that a licensee is solely responsible for compliance with his or her applicable licensing requirements. It is also a fundamental principle that you must hold a license in every state in which you are selling, soliciting, or negotiating the sale of insurance.

27. The Applicant told the Aflac Investigator he did not believe he could get licensed in Tennessee due to legal problems in Missouri. In addition, he impersonated a licensed agent in order to cover up his unlicensed activities. In summary, it is simply not credible for the Applicant to maintain that he did not understand he needed a license in Tennessee or that he thought the agency was submitting an application on his behalf. Applicant's conduct in Tennessee was fraudulent, dishonest, deceptive, and untrustworthy. Similarly, his inconsistent statements, many given under oath at the hearing, cast further doubt on the Applicant's honesty and trustworthiness.

The Applicant has not demonstrated that he understands what is required of a licensed insurance agent or that he won't engage in dishonest, untrustworthy, or unlicensed activities again.

### **Findings of Fact and Conclusions of Law**

28. The Commissioner has jurisdiction over the Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

29. The Assistant Commissioner of Insurance, as the Presiding Officer, is acting on behalf of the Commissioner of Insurance as the agency head and is empowered to render a Final Order.

30. Factors that are not in the Applicant's favor and which support the Department's decision are discussed in detail above. These include the failure to disclose the Conviction on the application, the seriousness of the conduct underlying the termination for cause, the fraudulent and dishonest nature of that conduct, the failure to take responsibility for his conduct, and the Applicant's lack of candor and reliability of information demonstrated by his inconsistent and contradicting statements and testimony. These factors outweigh the mitigating evidence provided in favor of Applicant's cause.

### **Finding and Order**

In weighing all the evidence presented in this matter, the Commissioner finds that the insurable interests of the public would not be served by the issuance of a license to the Applicant at this time.


**IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE THAT the DENIAL of Applicant's application for a Kansas nonresident insurance producer's license is AFFIRMED.**

**IT IS FURTHER ORDERED THAT,** pursuant to K.S.A. 40-4909(j)(1), the Applicant **SHALL NOT APPLY** for a license until after **ONE YEAR** from the date of this Order.

IT IS SO ORDERED THIS 21<sup>st</sup> DAY OF MARCH 2022, IN THE CITY OF  
TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



VICKI SCHMIDT  
COMMISSIONER OF INSURANCE

BY:   
Barbara W. Rankin  
Assistant Commissioner  
Presiding Officer

**NOTICE**

Pursuant to K.S.A. 77-601 *et seq.*, Applicant is entitled to judicial review of this Final Order. The petition for judicial review must be filed within thirty (30) days of service of this Final Order (plus three [3] days for service by mail pursuant to K.S.A. 77-531). In the event Applicant files a petition for judicial review pursuant to K.S.A. 77-613(c), the Agency Officer to be served on behalf of the Kansas Insurance Department is:

Justin L. McFarland, General Counsel  
Kansas Insurance Department  
1300 SW Arrowhead Road  
Topeka, KS 66604

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the above-and-foregoing Final Order upon Applicant by causing a copy of the same to be emailed on 21st day of March 2022 and deposited in the United States mail, first class postage prepaid, on the 22nd day of March 2022, addressed to the following:

Reece West

Lee's Summit, MO

*Applicant*

And hand-delivered to the following:

Kimberley Davenport Megrail  
Senior Attorney  
Kansas Insurance Department  
1300 SW Arrowhead Road  
Topeka, KS 66604  
*Counsel for the Kansas Insurance Department*

  
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Jill Spurling  
Legal Assistant